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No. 96-509

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1996

MICHAEL PRINGLE,

Petitioner,

against

TERRANCE M. WOLFE, as Town Justice of the Town of Walworth, RICHARD M. HEALY, as District Attorney of the County of Wayne, and PATRICIA B. ADDUCI, as Commissioner of Motor Vehicles of the State of New York,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE NEW YORK STATE COURT OF APPEALS

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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TERRANCE M. WOLFE, AS TOWN JUSTICE OF THE TOWN OF WALWORTH, RICHARD M. HEALY, AS DISTRICT ATTORNEY OF THE COUNTY OF WAYNE, AND PATRICIA B. ADDUCI, AS COMMISSIONER OF MOTOR VEHICLES OF THE STATE OF NEW YORK,

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Respondents respectfully request this Court to deny the petition for a writ of certiorari seeking to review the opinion of the Court of Appeals of the State of New York. The judgment of the Court of Appeals was in all respects proper, and the Court of Appeals' opinion is entirely consistent with the decisions of this Court.

Counterstatement of Facts

At the time petitioner brought this action, he was a defendant in a criminal proceeding in the Town of Walworth in Wayne County, New York, charged with driving while intoxicated and driving while intoxicated per se, a violation of New York Vehicle and Traffic Law (hereinafter VTL) § 1192(3) and (2), respectively. Pursuant to the provisions of VTL § 1193(2)(e)(7), petitioner's license was subject to prompt temporary suspension pending the disposition of the criminal charges. However, before his arraignment, he commenced this declaratory judgment action seeking to strike VTL § 1193(2)(e)(7) as unconstitutional and an order enjoining its enforcement against him (App. 13).[1]

The Supreme Court granted a preliminary injunction against the statute's enforcement. Subsequently, it granted plaintiff's motion for summary judgment over the opposition of respondent Adduci (App. 13, 20). It held, *inter alia*, that the suspension provisions on their face deprived petitioner of his due process rights under *Mathews v Eldridge*, 424 US 319 (1976), in that they did not give him adequate notice that his license was subject to suspension and that they deprived him of a meaningful opportunity to be heard. The court viewed the statute as requiring the arraignment court to make its findings regarding the propriety of ordering the suspension before the motorist is granted the opportunity to be heard (App. 17-18). The court also found there to be an "inherent problem" in the statute because the statute provides that the arraignment court must make a determination as to whether there is reasonable cause to believe that the driver operated a motor vehicle with a blood alcohol content (hereinafter BAC) level of .10 or more, while

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[1] App. refers to the appendix attached to the petition for a writ of certiorari.

the introductory clause authorizes a license suspension of a driver who has that BAC level *at the time of the arrest*. The "problem", in the court's view, is that it is not a crime to be intoxicated to that degree at the time of the arrest (App. 19-20). Ms. Adduci appealed the Supreme Court judgment directly to the New York Court of Appeals (App. 4).

The Decision of the New York Court of Appeals

The Court of Appeals reversed the judgment of the New York Supreme Court and upheld VTL § 1193(2)(e)(7) as constitutional on its face, holding that the statute provides a motorist all the process that is due under the balancing test in *Mathews v Eldridge*, 424 US 319 (1976), and in subsequent cases upholding similar statutory schemes. *Illinois v Batchelder*, 463 US 1112 (1983); *Mackey v Montrym*, 443 US 1 (1979); *Dixon v Love*, 431 US 105 (1977) (App. 1, 4, 10). The Court analyzed the statute in light of the three factors in *Mathews v Eldridge* (App. 5, *et seq.*).

Citing *Mackey v Montrym*, the Court of Appeals considered the first factor, the private interest to retain one's license pending criminal prosecution of DWI charges, as requiring consideration of the timing of a judicial hearing, the duration of the suspension, and the availability of hardship relief. The Court held that the severity of New York's prompt suspension law is tempered by a driver's right to a pre-suspension judicial hearing, its temporary duration, and the availability of a conditional license and hardship relief (App. 5).

The Court construed the statute as authorizing the arraignment court to suspend a driver's license only upon a *prima facie* showing that the accusatory instrument is sufficient on its face and that there exists reasonable cause to believe that the driver

operated a motor vehicle while having a blood alcohol level in excess of .10 of one percent as shown by a chemical test. The arraignment court must have the chemical test results in certified, documented form. At that point, the driver has the opportunity to present evidence to rebut the court's tentative findings. The Court of Appeals rejected the petitioner's claim and the New York Supreme Court's holding, asserted again in the petition for certiorari, that the statute required the court to suspend the license *before* the driver had the opportunity to rebut the *prima facie* showing (App. 5-6).

The Court of Appeals also rejected the New York Supreme Court's conclusion and petitioner's argument, made again in his petition, that the statute does not provide adequate notice of the license suspension hearing. VTL § 1193(2)(e)(7) says in plain language that the license suspension hearing will be held before the conclusion of all proceedings required for arraignment. Since it is self evident in the statutory context that negative consequences flow from test results showing an excessive blood alcohol level, no other specific warning that the driver's license may be suspended is required. The driver is notified of the time of arraignment and is given an opportunity to prepare the rebuttal of the *prima facie* showing of reasonable cause. The Court of Appeals construed this provision to require the arraignment court to grant the motorist a short adjournment of the arraignment, when necessary in order to do so (App. 6-7).

The second *Mathews* factor is the risk of erroneous deprivation. The Court of Appeals found that to be minimal. Under the Court's construction of the statute, the arraignment court may not order suspension of a license without the documented results of a reliable chemical test showing the blood alcohol level in excess of the allowable level. Even the minimal risk of erroneous deprivation is further diminished by the driver's right to a

meaningful pre-suspension opportunity to rebut the chemical test results (App. 8-9).

The last *Mathews* factor is the balancing of the importance of the State's interest served by the prompt suspension law against the increased burden of providing additional procedural safeguards. The Court of Appeals cited this Court's decision in *Mackey v Montrym*, 443 US at 17, that the States have a "paramount interest" in maintaining highway safety and are "accorded * * * great leeway in adopting summary procedures to protect public health and safety" (App. 9). It held that another level of procedural protection would require plenary hearings "effectively convert[ing] the license suspension proceeding into a trial on the merits of the underlying criminal charge" (App. 9). This would not only be expensive and cumbersome, but would "subvert the State's compelling interest in promoting highway safety" (App. 9). Since the license is suspended only temporarily, more elaborate procedural protections are not required (App. 9).

Finally, the Court of Appeals rejected petitioner's contention that the statute was vague as to when an excessive BAC level was prohibited - - whether at the time of the operation of the motor vehicle, which was referred to in § 1193(2)(e)(7)(b), or at the time of the arrest, referred to in subdivision (a) of the same section. When the provision's clauses are read together, it is clear that a *prima facie* showing for a temporary license suspension is only made when the arraignment court finds reasonable cause to believe the driver operated a motor vehicle with a BAC level of .10 of one percent or more (App. 10-11).

REASONS FOR DENYING THE WRIT

The New York State Court of Appeals' opinion in no way conflicts with settled law or any decisions of this Court.

Mindful of the test this Court established in *Mathews v Eldridge* and its applications in subsequent cases, the Court of Appeals construed the statute in a manner that gives a motorist who falls under the statute's provisions all the procedural process that is due. Petitioner makes two arguments in support of his petition, both based on the erroneous premise that the Court of Appeals' decision conflicts with this Court's precedents. The first is that the statute does not provide sufficient notice that the State will seek to suspend the motorist's license and that a hearing will be held on that issue. The second is that the statute fails to provide the motorist a meaningful opportunity to be heard.

Much of petitioner's dispute is with the Court's construction of the statute. He persists in his argument that the statute requires the arraignment court to make its findings and suspend a license before, rather than after, the motorist has had an opportunity to rebut the *prima facie* showing even though the Court of Appeals found that the statute requires the driver be given the opportunity to rebut before a suspension is ordered. This disagreement does not amount to a conflict between the Court of Appeals and this Court over the principles central to procedural due process.

Another argument is that the statute does not contain a provision for adequate notice that a license suspension hearing will be held at the time of the arraignment. As a preliminary matter, petitioner misstates that "[i]t was uncontroverted below

that Vehicle and Traffic Law § 1193(2)(e)(7) provides the motorist with no notice whatsoever of the immediate hearing to impose an indeterminate suspension of the operator's license."[2] (Pet. at 9). To the contrary, respondent Adduci has always maintained and the Court of Appeals found that the statute gives notice to motorists that a license suspension hearing will be held before the conclusion of the arraignment. According to the Court of Appeals, before a license may be suspended, the accused driver must have notice of the criminal charges and the time of the arraignment, as well as time to prepare to rebut the findings of reasonable cause, even if that means the arraignment court must grant a short adjournment for that purpose. It also noted that any driver should be on notice that there are adverse consequences to being caught driving a vehicle with an excessive BAC level. This notice is sufficient to provide the motorist with a meaningful opportunity to be heard. None of this Court's precedents requires a contrary conclusion.

Ironically, this declaratory judgment action is testament to the adequate notice accorded by the statute. Although petitioner attacks the statute on its face for failing to give a motorist enough notice that a license suspension hearing will be held, he had enough notice of the suspension procedure to commence this action before his arraignment.

Petitioner also objects to the Court of Appeals' conclusion, reached by reading two of the statute's clauses together, that the conduct it prohibits is driving with a BAC level of .10 of one

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[2] While it is not part of the point made here, the petitioner also misstated that the period of suspension is indeterminate. The respondents have always asserted and the Court of Appeals has agreed that the suspension period is temporary and limited by the speedy trial act as well as by the availability of hardship relief and the opportunity for a conditional license after 30 days.

percent or more. Instead, in his petition he insists that because one clause refers to the time of arrest and the other refers to the time the defendant is operating a motor vehicle, the statute is too vague to constitute adequate notice of the prohibited conduct. (Pet at 13). Again, this is a disagreement over how the Court of Appeals construed the statute.

The next grievance voiced by petitioner is not a matter of statutory interpretation, but is equally without merit. He complains that the statute does not give a driver an opportunity to challenge the accuracy of the chemical test. In the context of a summary and temporary suspension of a license, clearly the petitioner has no due process right to the full opportunity to mount a defense that he will have as the defendant at the trial of the underlying criminal charges. *See, Dixon v Love*, 431 US at 113, in which the Illinois statute at issue there authorized its Secretary of State to revoke a driver's license without a preliminary hearing upon a certain showing. This Court said, "something less than an evidentiary hearing is sufficient prior to adverse administrative action." Since this is a summary and temporary suspension, it is based on reasonable cause to believe and requires production of the results of a chemical test generally considered to be reliable. In spite of the petitioner's skepticism about the accuracy of the chemical test used, the production of the results of the widely recognized and accepted test is sufficient for this summary proceeding, especially in light of the fact that the driver has an opportunity to present any other evidence which may rebut that result. The appropriate time for full exploration of the accuracy of the particular testing equipment and procedure used is during the criminal trial proceedings.

Finally, the petitioner complains that the Court of Appeals decision resulted from its failure properly to apply the balancing

test enunciated as the third factor in *Mathews v Eldridge* (Pet at 16-18). His claim boils down to an assertion that the suspension is not temporary because it may last over two years, depending on how long the defendant has to wait for a trial date (Pet at 17) and petitioner's view that the availability of the hardship relief and conditional license does not adequately mitigate against the severity of the license suspension (Pet at 17-18).

There is no conflict with prior decisions of this Court on these points nor with any principles of settled law. The Court of Appeals applied the third factor in *Mathews v Eldridge* to the New York statute, which is unique in the details petitioner attacks: that of duration of the suspension and an allegedly "unique" hardship period. While the length of the suspension varies from defendant to defendant, it cannot be gainsaid that it is a temporary one, as opposed to a permanent or indefinite revocation. As the Court of Appeals held, its outer limits are circumscribed by several factors: the speedy trial act, availability of hardship relief and the opportunity for a conditional license. Petitioner can draw no support from the fact that New York's statute is not the same as the Massachusetts statute upheld by this Court in *Mackey v Montrym* (in which suspension was imposed for refusing to take a chemical test, not for failing one). It is not identical in many of its aspects and need not be in order to provide a driver sufficient due process protections. In any event, New York's statute is less severe. A license may be suspended under the Massachusetts statute in *Mackey* for up to 90 days, while New York's suspension under the statute at issue here is only automatic for 30 days, after which a conditional license may be issued. Moreover, the Massachusetts statute contains no provision for hardship relief as the New York statute does.

In addition, the petitioner has absolutely no basis for his unsupported statement (Pet at 18) that the suspension is more severe than the penalties upon conviction for the underlying criminal charge. In fact, New York provides much more serious and permanent consequences for convictions. For example, a conviction of driving while intoxicated *per se*, and driving while intoxicated is a misdemeanor punishable by a fine of $500 to $1000 and/or imprisonment for up to one year. A subsequent offense within 10 years of a predicate conviction is an E felony, punishable by a fine of $1000 to $5000 and/or imprisonment of up to four years. In addition, the defendant's driver's license may be revoked for a minimum of six months for a first offender and one year for a prior offender (within the previous ten years). VTL § 1193(1)(b), (c), (2)(b); Penal Law § 70.00.

Notwithstanding petitioner's assertions to the contrary, the Court of Appeals properly considered the hardship relief available for the first 30 days of the license suspension as one of the factors in mitigation of the severity of the suspension under the balancing test required by the third factor in *Mathews v Eldridge*. While in New York hardship relief is available, the statute would still provide sufficient due process protections even if it did not. *See, Mackey v Montrym*, 443 US at 12.

In sum, petitioner has merely repeated the same arguments he made unsuccessfully to the Court of Appeals about how the statute should be interpreted and how the factors in *Mathews v Eldridge* should be applied. Although the Court of Appeals' conclusions are at odds with petitioner's exhortations, they are consistent with the guiding principles of procedural due process in *Mathews v Eldridge, Illinois v Batchelder, Mackey v Montrym*, and *Dixon v Love*. Thus, there is no basis for granting the writ.

Conclusion

For the reasons stated, the petition for a writ of certiorari should be denied.

Dated: Albany, New York
October 28, 1996

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